

## **R E M A R K S**

The issue fee is being forwarded separately. Formal drawings accompany this 1.312 Amendment. The amendments made to the specification, claims and drawing figures are made pursuant to 37 CFR 1.312(a) and serve to merely correct some errors of form and/or further clarify the drawings, claims and specification. No new matter is added, and the claims are only minimally amended to correct an obvious error in terminology.

**I. The Drawing Amendments** are made in one version of the drawings, and merely insert the axes of rotation 200, 201 that are referenced in the specification and claims, but not numbered in the specification or numbered and illustrated in the drawing figures. The need for these changes are further discussed below.

**II. The Specification Amendments** are described and explained, by paragraph, below:

**A. The changes made on page 1, in paragraph [0002]** of the initial application and of Pub. No. 2004/0147376) merely correct awkward use of language.

**B. The changes made on page 1, in paragraph [0003]** of the initial application and of Pub. No. 2004/0147376) correct some awkward phrasing and eliminate some unnecessary and distracting anatomical language.

**C. The changes made on page 2, paragraph [0006], through page 3, paragraph [0009]** of the initial application (which is paragraph [0006] through paragraph [0009] of Pub. No. 2004/0147376) correct some awkward language and descriptions of physiology in the background description and clarifies the description of the preferred embodiment of the invention given in paragraph [0009] in a manner consistent with the detailed description and claims.

**D. The changes made on page 4, paragraph [0011] through paragraph [0013]** of the initial application (which is paragraphs [0011] through [0013] of Pub. No. 2004/0147376) clarify the description of the preferred embodiment of the invention given in these paragraphs and is consistent with the detailed description and claims.

**E. The changes made on page 6, paragraph [0022]** of the initial application (which is paragraph [0022] of Pub. No. 2004/0147376) clarify the manner of using the invention and are consistent with the specification which incorporates the provisional application that is the priority basis of the instant application. The provisional application illustrates the fact that the invention can be used when sitting facing either direction. (*See*, attached Illustrations 10-13 of the provisional application, included as Appendix B,).

**F. The changes made on page 7, paragraph [0026]** of the initial application (which is paragraph [0027] of Pub. No. 2004/0147376) insert numbers 200, 201 to denote the axes of rotation discussed in this paragraph and included in the revised drawing figures. These axes should ideally be numbered in the text and included in the drawing figures as they are included and discussed in the claims and numbering thereof helps to clarify the claims and specification. The aforesaid axes are evident in the operational photographs of the invention set forth in the provisional application. (*See*, Appendix B, attached Illustrations 10-13). As previously noted, the provisional application is incorporated into the instant application by reference.

**G. The change made on page 8, paragraph [0027]** of the initial application (which is paragraph [0027] of Pub. No. 2004/0147376) corrects a part numbering error—the spool should be numbered 118 as in the drawings and paragraph 32, not 188.

**H. The changes made on page 8, paragraph [0028]** of the initial application (which is paragraph [0028] of Pub. No. 2004/0147376) clarify the specification and operation of the invention (i) by clarifying the fact that the handles can be either pushed together or apart for exercise purposes (as illustrated in the provisional at Illustrations 10-13), (ii) by removing a sentence fragment, and (iii) by inserting the numbers (200, 201) for the rotational axes.

**I. The changes made on page 8, paragraph [0029]** of the initial application (which is paragraph [0029] of Pub. No. 2004/0147376) merely insert the numbers discussed above (200, 201) for the rotational axes.

**J. The changes made on page 9, paragraph [0033]** of the initial application (which is paragraph [0033] of Pub. No. 2004/0147376) merely insert the numbers for the rotational axes

(200, 201), and clarify and unify terminology used in referring to said rotational axes by eliminating the term “centerline” and substituting “rotational axes” therefor.

**K. The changes made on page 10, paragraph [0035]** of the initial application (which is paragraph [0034] of Pub. No. 2004/0147376) clarify the fact that it is the axes of rotation 200, 201 that are being discussed in the first sentence of said paragraph.

### **III. Claim Amendments**

The claim amendments to both of the existing claims comprise one substitution of accurate terminology for inaccurate terminology. The term “handhold means” has been substituted for “axes of rotation” in the clause of both claims that states that there is “a means for adjusting resistance to movement of said handhold means when a distance between the *axes of rotation* is decreased by a user.” As will be noted from review of the specification and drawing figures, including those of the provisional attached hereto, the distance between the axes of rotation 200, 201 is never decreased by the user. This is a set feature of the invention and these axes are, in general, oriented and spaced so as to pass through the glenohumeral joint of the user. (*See, e.g.*, original claims 3 and 5 as well as specification at [0026]-[0029]). It is, instead, the handhold means (*i.e.*, handgrips 88, 90 and cushioned arm supports 92, 94) that are brought towards each other by the user while exercising. (*Id.*) The Examiner, apparently allowing the applicant's attorney at that time to be his own lexicographer, graciously allowed this language to pass and correctly based his understanding and comparison of the instant invention to that of Ullman (USP 6,685,600) to be based on the fact that “handhold means” rather than “axes of rotation” was intended. (*See*, Office Action of 11/13/2006, at paragraph 2). And, the applicant's former attorney also appears to have ignored this problem in seizing on the conditionally allowed claims 8 and 17, to amend and prepare for allowance without further review and corrective amendment of this error in their terminology. Nonetheless, without the amendment made herein, the claim is rendered extremely confusing and possibly unenforceable. Applicant believes that this claim does not broaden claim coverage, or require fresh searching or extensive review by the Examiner as the correction made merely substitutes what is obviously correct terminology (on which the Examiner clearly based allowance) for language that is less accurate if not totally incorrect, and which would

confuse those reviewing the application, have potential to adversely affect the enforceability of the patent if not corrected at this point, and force the applicant to undertake the needless expense and trouble of seeking reissue of the patent if not corrected by the simple expedient of a 312 Amendment at this point in the proceedings.

#### **IV. Summary of Changes**

1. Formal drawings for this application are enclosed. One set includes the axes of rotation 200, 201. The other set does not. No new matter is included in either of these drawing sets as the said axes of rotation are discussed in the specification and claims.

2. No new matter has been introduced by the specification amendments. The amendments made revise the background, summary and detailed description initially submitted in ways that are primarily grammatical and/or involve awkward phrasing or unnecessary language. In a few cases, the corrections in the “Background” section correct minor factual errors related to human and exercise physiology. These changes merely correct matters that the inventor, who is a physician well versed not only in human physiology but in exercise physiology, considers would be distracting to those of ordinary or more than ordinary skill in the field of the invention. The inventor therefore considers these corrections to be necessary in order to eliminate unnecessary confusion that might otherwise arise and to clarify the background of the invention. A few “factual” changes are also made in the “Summary” section. These changes are consistent with the claims and Detailed Description. Changes to the Detailed Description correct minor errors, clarify the fact that the user can face both ways when using the invention and can push the handles thereof together or apart in doing different exercises (both as illustrated in the provisional application), and insert reference numbers for the axes of rotation of the handles, which should ideally be so designated as they are referenced in the claims. None of these changes should be questionable from the standpoint of 37 CFR 1.312(a), and none expand the scope of the claims or invention, or change the claims in any way. None of these changes was previously made because of communication problems between the inventor and his former attorney.

3. No new matter has been added in the claim amendments, nor has the scope of the claims been changed from that intended by the Examiner, nor will any further searching or examination be required. An error in terminology has merely been corrected. The claims remain patentable as the change is consistent with what was approved by the Examiner.

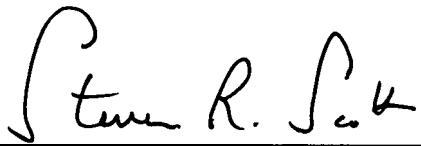
4. None of these changes was previously made because of communication problems between the inventor and his former attorney, which communication problems led to the discharge of the inventor's former attorney and the retaining of the undersigned.

### **Conclusion**

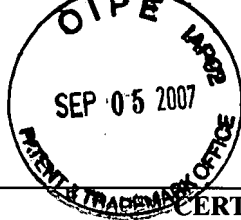
Applicant believes the application as amended by this 312 Amendment, is both allowable and should issue forthwith. Such action is thus respectfully requested. If the Examiner disagrees, or believes for any other reason that direct contact with Applicants' attorney would advance the prosecution of the case to finality, he is invited to telephone the undersigned at the number given below.

"Recognizing that Internet communications are not secured, I hereby authorize the PTO to communicate with me concerning any subject matter of this application by electronic mail. I understand that a copy of these communications will be made of record in the application file."

Respectfully Submitted:  
Kenneth Bryan Gautier

By:   
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Dated: September 5, 2007



**CERTIFICATE OF EXPRESS MAILING**

**DATE:** September 5, 2007

I hereby certify that the foregoing materials are being deposited on the date shown above with the United States Postal Service as U.S. Express Mail (No. EB 099752604 US) with sufficient postage in an envelope addressed to MAIL STOP ISSUE FEE, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

  
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Steven R. Scott

## APPENDIX A

## APPENDIX B



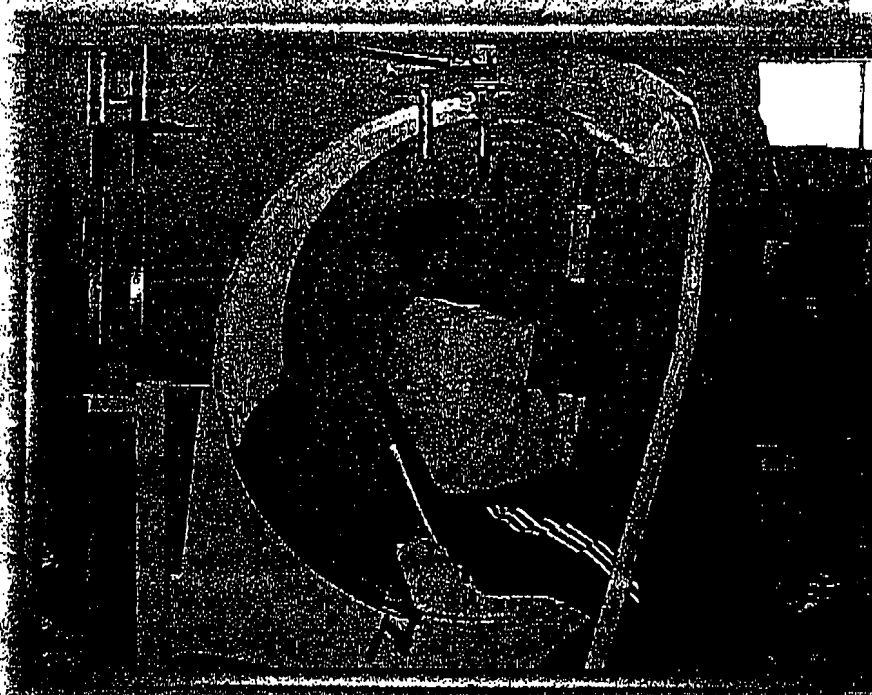
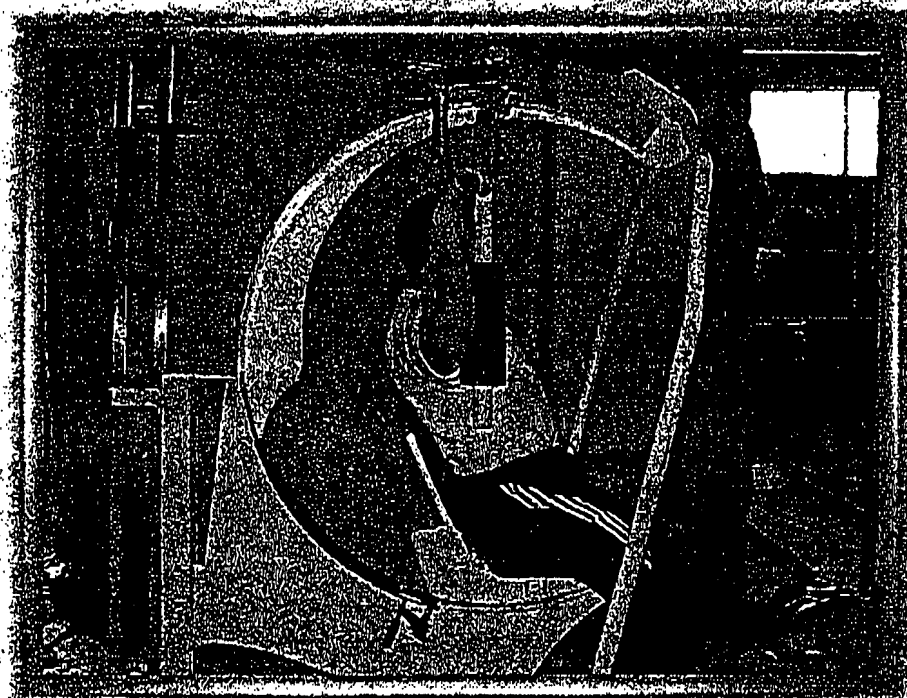


ILLUSTRATION 10.

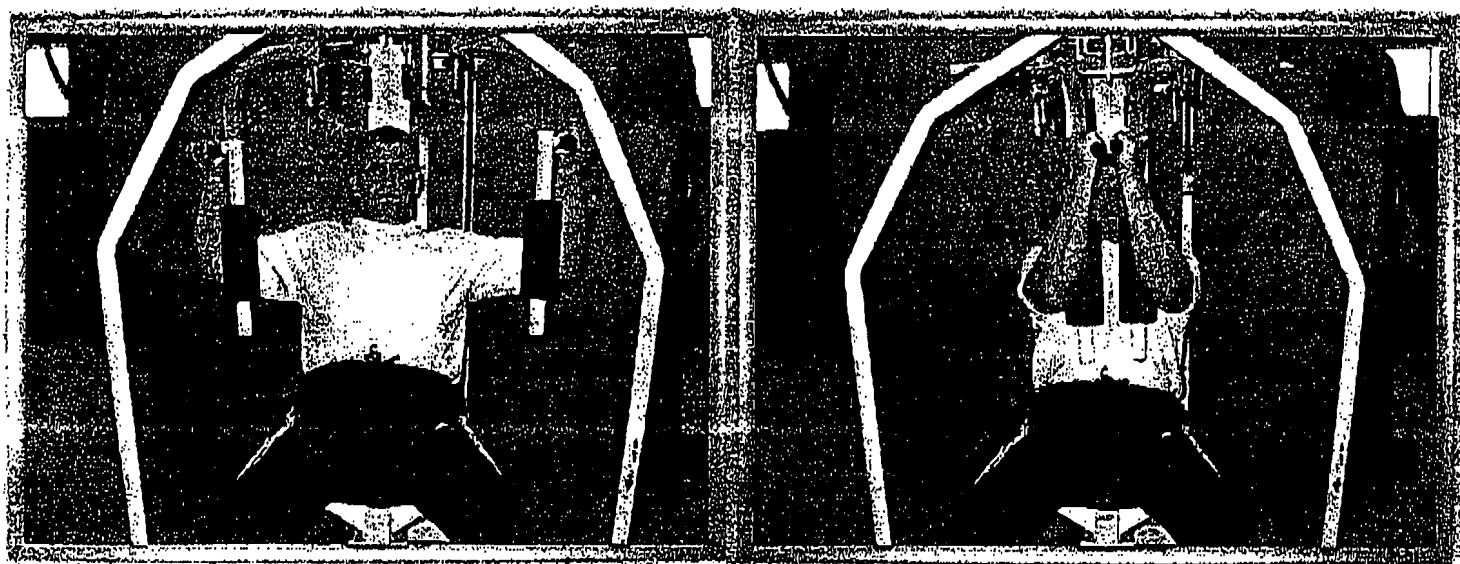
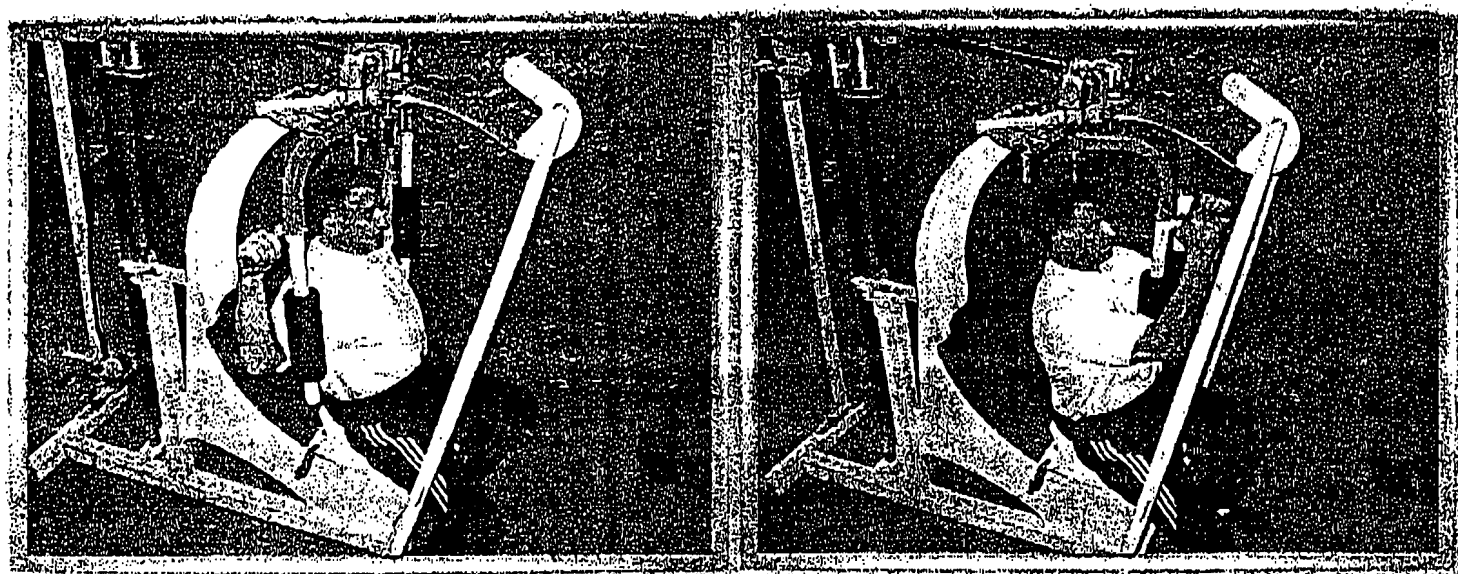


ILLUSTRATION 11.

3

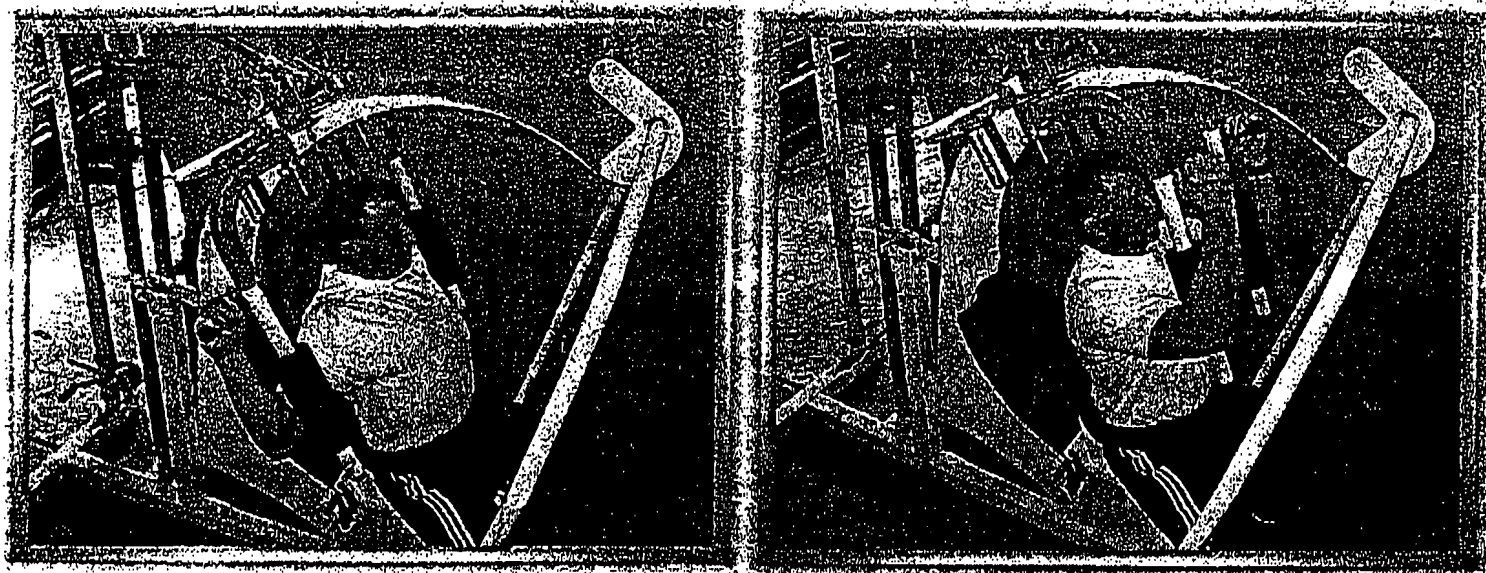
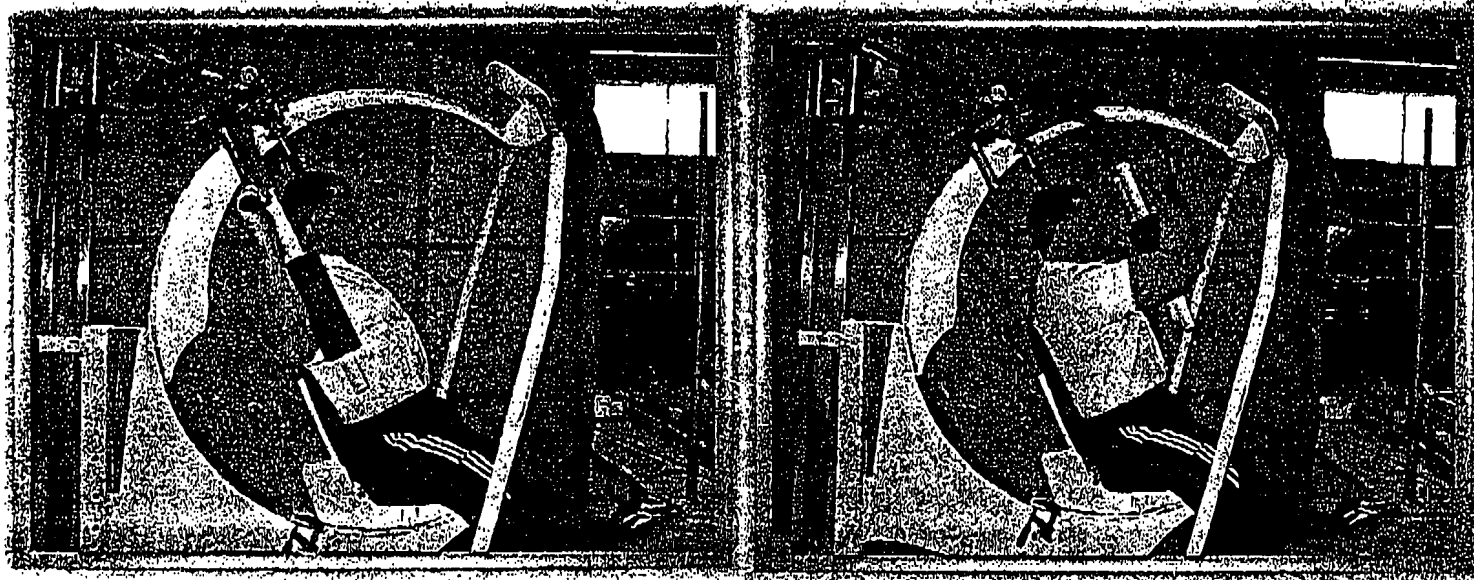


ILLUSTRATION 12.

4

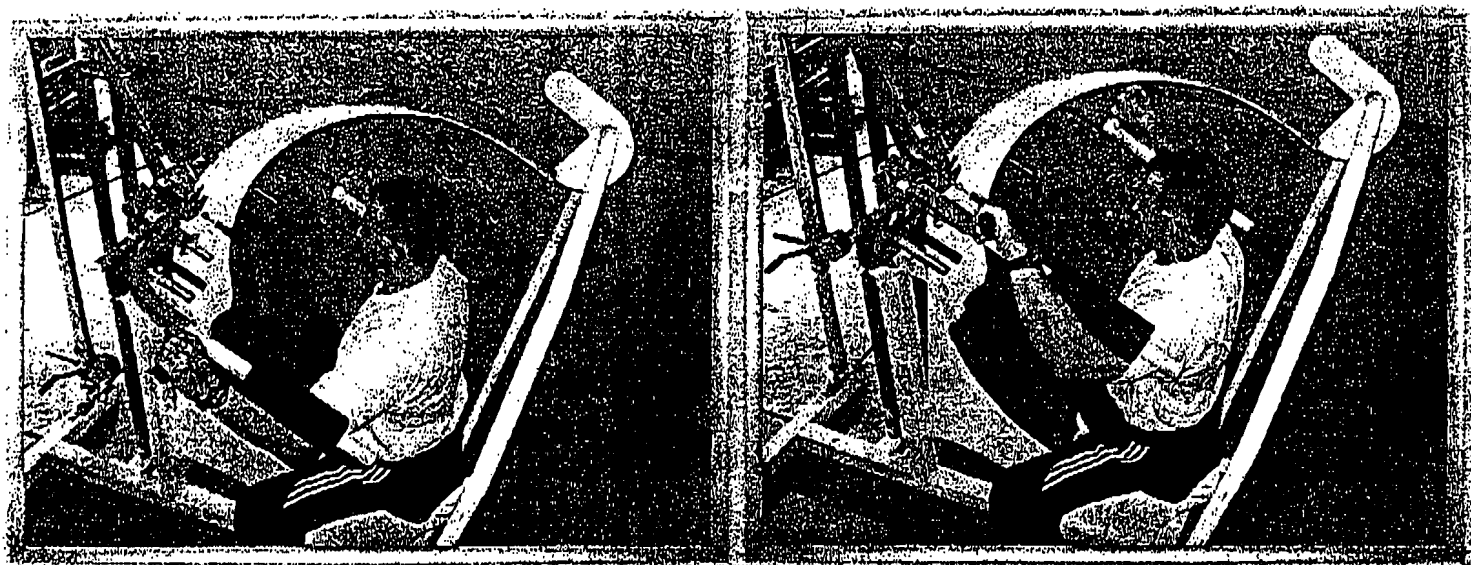
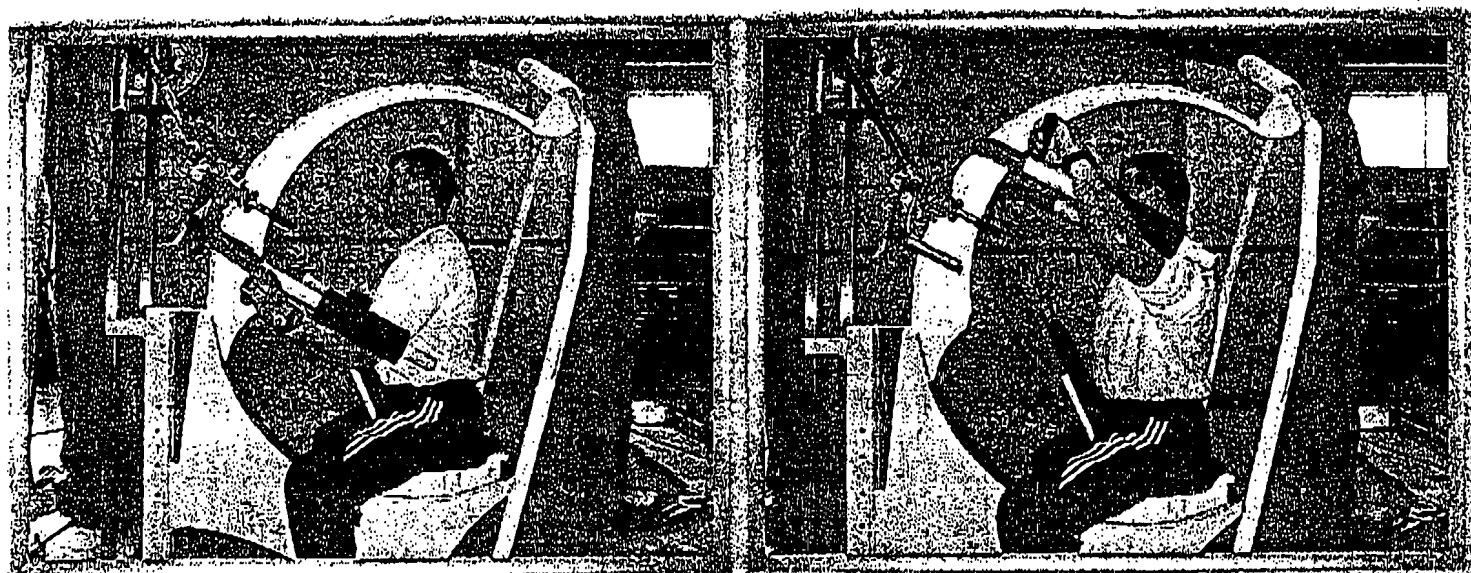


ILLUSTRATION 13



FORMAL REPLACEMENT DRAWINGS  
(WITH AXES 200, 201)



**FORMAL REPLACEMENT DRAWINGS  
(WITHOUT AXES 200, 201)**